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U.S. BANKRUPTCY COURT
MARY A. SCHOTT, CLERK



Cliff

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

<i>In re</i>)	Case No. 13-50833
)	
WORLD BOTANICAL GARDENS, INC.)	AFFIDAVIT OF WALTER L.
)	WAGNER IN SUPPORT OF
)	MOTION FOR APPOINTMENT
)	OF A TRUSTEE AND IN
)	OPPOSITION TO DEBTOR'S
)	MOTIONS

AFFIDAVIT OF WALTER L. WAGNER IN SUPPORT OF MOTION
FOR APPOINTMENT OF A TRUSTEE AND IN
OPPOSITION TO DEBTOR'S MOTIONS

I, Walter L. Wagner, affirm, state and declare under penalty of perjury of the laws of the States of Utah and Nevada as follows:

1. I am a creditor in the instant Bankruptcy action, though not listed as a creditor on the summary document, though mentioned in the body of the motions filed by the debtor setting forth my claims in Hawaii and Utah.

2. I am trained as a botanist¹ and in physics and medicine². I am also currently professionally licensed in many states (via their respective Departments of Insurance for Life and Health) and as a continuing requirement for licensing I enroll in and complete numerous Continuing Education (CE) courses. Those courses have included extensive training in Fraud, Waste and Mismanagement (Medicare Insurance), Anti-Money Laundering (Securities), Anti-Bribery, etc. As a consequence of this training on which I am regularly

¹ UC Berkeley 1972

² UC Berkeley, 1973-1975; VA Medical Center, 1979-1983; currently active member of the Health Physics society (www.hps.org)

tested in order to satisfy licensing requirements, I am reasonably proficient in identifying various types of frauds and other criminal activity involving money.

3. The instant Bankruptcy action involves numerous elements of fraud, including criminal fraud, on the part of the debtor, which will be detailed in subsequent sections below. In order to give this Court a better overview of the action, I will initially detail the origin of World Botanical Gardens, Inc. (WBGi; of which I am the Founder/Originator of the corporation), and the subsequent history of litigation engendered by the replacement management.

PRE-INCORPORATION HISTORY

4. The idea of developing a World-Class botanical garden in Hawaii was conceived by myself in the mid-1980s. In 1988 I began scouting the various Hawaiian islands for the ideal location, eventually deciding the best location was on the Big Island (Island of Hawaii), even though I then resided on Oahu where I taught³ in the public and private schools of Hawaii, and worked in construction

³ This was at various public secondary schools, as well as three private schools including the school from which President Obama graduated (a few years before I began teaching there).

on various Hawaiian Engineering Construction projects⁴ during that time. This pre-incorporation work involved extensive capital expenditure on my part primarily for traveling to the various potential sites to locate an ideal site.

5. In 1993 I located a prime site on the Big Island (Island of Hawaii) and began negotiations with the owner, Mauna Kea Agriculture, Inc. (MKA) that had been farming sugarcane on the land for many decades. In August 1994 an agreement in principle was reached on an area that constituted approximately 300 acres bordering on the Umauma River to the north, and consisting of 4 separate but adjoining parcels (TMKs⁵). This agreement was formalized and signed by both MKA and myself (as WBGI's President) on April 6, 1995 and is the date on which construction of the botanical garden commenced on the site, following extensive preliminary work that commenced on the Big Island in January 1995.

⁴ These projects included construction of the H-3 freeway in which we tunneled through the Koolau Mountains for the new H-3 freeway with extensive elevated roadways; for construction of Honolulu International Airport improvements; for construction of Kakaako High-rise apartments; etc.

⁵ TMK stands for Tax Map Key, and all land parcels in Hawaii are designated by a master list showing each parcel by that number, which is commonly understood by Hawaiian realtors. These parcels are better identified by their primary intended uses for the garden, and are known as the *Waterfall Overlook Parcel* (90 acres); the *Rainforest Parcel* (180 acres); the *Visitor Center Parcel* (26 acres); and the *Front Door Parcel* (3 acres).

6. The botanical garden project was formalized as a business project in 1994 with the formation of *World Botanical Gardens Joint Venture Partnership* as a joint venture partnership (JVP) amongst several individuals. Some of the original partners in the JVP included myself, Linda Wagner, Cal Andrus, Dan Perkins, Ron Tolman, John Wagner, et al. It was conceptualized that the JVP would serve as an 'umbrella organization' which in turn would form numerous separate stand-alone botanical garden corporations under the 'umbrella', with the first botanical garden to be the one located in Hawaii. The JVP was formed in the state of Utah in 1994 at the time of obtaining an agreement in principle from MKA to acquire that land asset. In early 1995, the JVP developed the first corporation (WBGI), with myself as the incorporator and President, and Linda Wagner as the Secretary and Treasurer, and the corporate Board of Directors consisting of both of us as well, with the articles of incorporation filed in Utah. The April 6, 1995 land purchase agreement was between MKA and WBGI, signed by MKA's representative and myself as WBGI's President.

POST-INCORPORATION HISTORY --- PRE-2004

7. Work commenced immediately following signing of the formal land purchase agreement, and after several months, the botanical garden opened its

Rain Forest parcel to public touring on July 4, 1995, with free admission on that day. Over the course of the following decade, work continued on the other parcels, with the botanical garden opening more and more sections to public touring, and with a continuing increase in tourism commensurate with the growth. In late 1995 an overlook area was discovered overlooking the Umauma Falls⁶, and this parcel was developed with the intent of adding the Waterfall Overlook as part of the major attraction. This overlook soon became the major attracting feature of the botanical garden, and featured prominently in the advertising literature, and was written about extensively by tour companies and others promoting tourism to the Big Island.

8. In order to facilitate the botanical garden development, I elected to receive Promissory Notes in lieu of earned salary, and these were signed year-by-year on January 1st of each year. Linda Wagner and I lived and raised our family by using her income earned as a teacher, her savings, my savings, and a small

⁶ The Umauma Falls is a triple-tiered waterfall complex, relatively unique in Hawaii, and was essentially undiscovered by way of the overlook prior to WBGI's development of a roadway to the overlook, with the previous method of viewing being a mile-long hike upstream over tumbled boulders, which few tourists ventured. The waterfall is written about in Wikipedia at http://en.wikipedia.org/wiki/Umauma_Falls ; and it can be viewed at the website of the current owner at www.umaumaexperience.com

salary⁷ she earned for bookkeeping/office-management for WBGI. In addition the corporation paid for our housing, where we also maintained a corporate nursery, storage area, and corporate office. That work of developing the botanical garden, conducted between January 1995 and January 2004 is now the subject of the pending Hawaii suit (*Wagner v. WBGI*, Hawaii) that has been pending in Hawaii court since 2004.

9. The JVP continued to take in new partners over time, and annual partnership meetings were held at the Hawaii botanical garden. The JVP determined the cost to join the partnership (based on a share-ownership percentage), and twice voted to increase the number of authorized shares, essentially 'watering-down' the existing partners⁸. The JVP continued to monitor the development of the first corporation (WBGI), and no change of officers was made during that first decade. In April 2001 the WBGI corporation was incorporated anew in Nevada with all of the assets and liabilities transferred to the Nevada Corporation. In addition, a 'World Botanical Gardens – Second' corporation was incorporated in anticipation of starting the second botanical garden, but no further work was done on that, and it was not funded and

⁷ About \$20,000/year for about 3 years

⁸ I was reduced from 33.33% ownership interest to 16.67% ownership interest.

subsequently dissolved.

10. In 2001 construction of the Visitor Center on the 26-acre visitor center parcel commenced with excavation of the site, as well as development of architectural plans. A scale model of the Visitor Center was presented to the partners at the June 2001 JVP meeting. However, on September 11, 2001 tourism to Hawaii ceased for an entire week as all flights were cancelled, and following resumption of flights tourism was at significantly reduced rates, and did not return to normal for approximately one year (in late 2002). Numerous Hawaii businesses bankrupted during the interval, including the cruise-ship that had been generating 20% of the WBGI gross revenue, as they had adopted the WBGI garden as one of their weekly major tours when in Hilo port, and bussed large numbers of tourists to the gardens. Consequently, WBGI suffered an unanticipated serious financial set-back which took two years to remedy.

11. In order to keep WBGI viable, I continued to accept only Promissory Notes instead of a monetary salary, loaned an additional \$70,000 to WBGI on my personal credit cards, and received tacit permission to slow payment of the WBGI IRS payroll taxes while WBGI spent two years to bring that current, with the understanding from the IRS agent that I could become personally liable for those delayed payments should WBGI not get caught up (which WBGI did in

2004), and the JVP continued to accept new partners with new capital infusion from them.

12. This financial strategy was quite successful, and by the tail end of 2003 tourism to the gardens was at an all time high, contracts that were in arrears had been brought current, new investment capital was at a higher level than ever, and WBGI was able to look anew at resuming construction on the Visitor Center, begin paying down the cash loans⁹ I had made on my personal credit cards, as well as bring the IRS payroll taxes current.

13. However, certain then-recent members, notably one Kenneth Francik, of the JVP expressed their concern that development was not fast enough, and that the Visitor Center had not been constructed as had been promised in June 2001, prior to 9/11/2001. The JVP voted in early 2003 to form its own board of directors¹⁰, which board included Kenneth Francik (and myself). However, the board did not meet at all during its first term and did nothing other than agree to

⁹ This included \$23,500 cash deposited directly into the WBGI payroll account to cover WBGI's payroll, as well as about \$50,000 in materials, advertising, etc. that was purchased on my personal credit cards for WBGI's benefit. The Promissory Notes had been deliberately written with a 10-year delayed payback so that there was no immediate need for payment of my past due salary so long as no other breaches occurred. Both the breach of the repayment of the credit card loans, as well as payment of the Promissory Notes which had become immediately due upon breach of the credit card loans, are the subject of the Hawaii action (*Wagner v. WBGI*).

¹⁰ Originally I had served as the general managing partner for the JVP between 1994 and 2003.

hold a vote at the next annual partnership meeting seeking a one-year extension of its term. Consequently, the corporate board and corporate officers (myself and Linda Wagner) continued in those capacities. At the August 2003 JVP annual meeting the JVP board was continued by voice vote for an additional year, with the same makeup as the board that had not met, with the expectation that additional time would allow the board to function. Again, following that meeting, the board did nothing until its first meeting in April 2004 when it met together as a board in Las Vegas to discuss the business affairs of WBGI. This is an important point, in that in subsequent years Kenneth Francik fraudulently proclaimed that the JVP board voted in August 2003 to replace the corporate officers in August 2003 with Kenneth Francik replacing myself as President, and Annette Emerson replacing Linda Wagner as Secretary. In actuality that vote to change the corporate officers did not take place until September 2004, bringing to a close the initial decade that saw phenomenal development and growth of the botanical garden.

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POST INCORPORATION HISTORY --- POST-2003

14. At the first board meeting in Las Vegas in April 2004 Kenneth Francik¹¹ was voted in as the board chair. At that meeting the board reviewed WBGI's finances and directed the corporate officers to finalize the third land parcel acquisition (the Rain Forest parcel). Consequently, in June 2004 the WBGI officers (myself and Linda Wagner) signed the third Corporate Resolution directing acquisition of that parcel, as the two prior Corporate Resolutions had been previously done in prior years for the first two parcels (Front Door parcel and Visitor Center parcel). This left only the Waterfall Overlook parcel remaining with a lease/purchase-option, the other three having exercised the option to purchase and consummated the purchase.

15. Commencing in June 2004, WBGI discontinued payment of its credit card obligations that were on monies I had personally loaned to WBGI. As a result, an agreement was reached with Kenneth Francik, Dan Perkins, and David Adams (the majority of the board including myself) whereby I would sell some of my partnership position to others to help satisfy those payments.

¹¹ Francik had deceived our vetting committee when seeking to join the partnership. He falsely claimed he was retired from the LAPD and was running a successful restaurant business. In fact, he was fired from the LAPD for fraud and deception on the courts and prosecuted on felony charges, as part of the then ongoing Ramparts Investigation. While he was selling prepared food, it was from a turn-key hot-dog stand franchise he'd purchased and subsequently sold at a loss without profit.

16. In September 2004 the board voted to replace the corporate officers with Kenneth Francik as WBGI's new president and Annette Emerson as its new Secretary and Treasurer. However, later in the month at the annual meeting a fraudulent partnership vote was taken in which the majority of the shares in attendance (held by myself) were not counted, and instead the shares of Francik and his cronies were counted, to which were added the votes of the non-voting issued shares (as the majority of the partners had not flown to Hawaii, and had not delegated proxies), in violation of the by-laws, purporting to 'elect' Kenneth Francik and his associates. Consequently, numerous shareholders including Ron Tolman were incensed that the governance of the company was essentially being stolen by Kenneth Francik and his associates, who only had a small ownership interest¹².

17. In early 2005, Ron Tolman and nine other early investors, in consultation with WBGI's long-term corporate attorney from Honolulu, organized a WBGI corporate board in accordance with provisions of the WBGI by-laws, etc. However, when Francik challenged that properly constituted board, the Bank of Hawaii froze the corporate account. In order to avoid non-payment of salaries,

¹² My ownership interest was 16.667%, Francik's interest was approximately 1.0%, most of his other board members had lesser percentages, and the total interest of persons voting for Francik and his associates was less than 10%].

etc. about April 2005 Ron Tolman entered into a written agreement¹³ with Francik whereby they both agreed that routine WBGI expenditures would be allowed, and that all other expenditures would be resolved between them, and in no circumstances would WBGI corporate funds be utilized for litigation of that dispute between Tolman and Francik. The Bank of Hawaii then released the funds back to the control of the card signatories.

18. About two weeks later, in May 2005 Kenneth Francik and his board voted to initiate litigation against Ron Tolman and the members of Tolman's board (including myself) and to utilize WBGI monetary assets to pursue that litigation.

19. Consequently, Bob Story of the *Story Law Group* in Nevada was retained to file a suit in Nevada, and Tom Yeh of *Tsukazaki, Yeh and Moore* was retained to file suit in Hawaii; and they were both retained by Francik utilizing the WBGI corporate funds. They filed two suits, both of which were essentially identical, in two forums (Nevada and Hawaii).

20. The suits, nearly identical in language and identical in parties, set forth two types of claims; the one claim was to determine whether the Francik Board was the proper governing board; and the other claim was for various 'monetary damages' claimed against primarily myself, as well as to a lesser extent the

¹³ A copy of the agreement will be provided upon request of the appointed trustee.

other board members.

21. The monetary damages claims were hoaxes. They essentially were a composition of lies and misrepresentations, claiming that many of the various expenditures I had made while serving as WBGI's president were unlawful, and claiming that the sale of my personal shares¹⁴ was likewise unlawful. As examples of the types of hoaxes that those claims were, I briefly detail them as follows:

- The false claim was made that payment of housing (rent payment) by WBGI for myself while I was working for WBGI without salary was unlawful, and sought "recovery" of those monies paid;
- The false claim was made that payment of WBGI money to an attorney retained by WBGI in Honolulu to settle a contract dispute with MKA was unlawful, and sought "recovery" of those monies paid;
- The false claim was made that payment of money to an attorney retained by WBGI in California to defend myself against false charges made while I was engaged in WBGI business in California and to prevent a lawsuit against WBGI in conjunction therewith, was unlawful and sought "recovery" of those monies paid (the false charges brought in California were dismissed);
- The false claim was made that payment of medical insurance by WBGI for

¹⁴ In 2004 I donated 1000 of my 3,333 shares to a non-profit entity that had been in existence for many years but had not functioned, known as World Botanical Gardens Foundation. That foundation then sold about 700 of those shares, and the money was used to purchase materials donated to WBGI, to pay for my services to WBGI for two years at a modest amount, to continue to pay my rent for those two years, and to help pay down the credit card loans that WBGI had breached. By the end of 2006 those monies were exhausted in bettering the WBGI garden.

myself was unlawful (even though required by Hawaii law), and sought “recovery” of those monies paid;

- The false claim was made that WBGI’s loan of approximately \$50,000 to a business entity in California, secured by the money owed to me by WBGI, and which in turn accrued approximately \$100,000 in revenue to WBGI, was unlawful and sought “recovery” of that loan;
- The false claim was made that a small portion (about \$35,000) of money paid to me as an advance on the approximately \$450,000 back-wages owed, in accordance with provisions for such wages, was unlawful, and sought “recovery” of that small portion of salary actually paid;
- The false claim was made that the board-approved sale of my personal share ownership in the JVP was unlawful, and sought to “recover” those monies already spent on WBGI development and that the money instead be diverted to the Francik Board to spend.

22. As a consequence of the fact that the Francik Board was proceeding in two separate forums (Nevada and Hawaii) on essentially the identical false claims, naming Ron Tolman and the members of the Tolman Board as joint defendants, I filed a motion in the Hawaii case seeking dismissal of either the Hawaii case, or the Nevada case, on the basis of statutory and case law requiring judicial economy, etc. and precluding essentially identical claims and parties from litigating in more than one forum.

23. At the hearing of the motion circa January 2006, the Hawaii judge directed that if the Francik board, guised as WBGI, wished to proceed in Hawaii with monetary claims, they would have to dismiss the monetary claims in Nevada.

Tom Yeh, guising himself as WBGI's attorney, agreed to such, and the court order was issued accordingly. Consequently, the parties agreed that only the 'governance issue' would be litigated in Nevada.

24. The Nevada case came to trial, and Ron Tolman and I were present. Other parties had already been dismissed. Neither I nor Mr. Tolman flew in witnesses from Hawaii to Nevada who were otherwise prepared to show the monetary claims for the hoaxes that they were, as the monetary claims were not at issue in Nevada. Before trial Mr. Story had agreed, in conjunction with the agreement in the Hawaii case, that monetary claims would not be litigated in Nevada. However, at trial Mr. Story then presented witnesses on the one monetary claim pertaining to the sale of my personal shares, and his witness (Francik) perjured himself. Since the opposing witnesses were in Hawaii and not at the governance trial in Nevada, they had been deceived into not appearing in Nevada and were unable to give testimony detailing Francik's lies. (Francik lied and falsely claimed I had sold the company's treasury shares, not my own personal shares as was actually the case, as both the WBGI officer manager (David Adams) and the WBGI corporate Treasurer (Linda Wagner) were prepared to testify.

25. Attached herewith as Attachment "A-1" is the sworn affidavit of Linda

Wagner that was signed in my presence by her. This affidavit details somewhat that particular fraud on the Nevada court by Mr. Story, from her perspective, as well as other frauds engaged in by Francik. Also attached is my sworn affidavit detailing that and other frauds mentioned below, attached as Attachment "A-2".

26. Swayed by the false story presented by Francik of 'corruption' on my part for ostensibly selling the company's treasury shares and 'pocketing the money', and without counter witnesses to show the fraud, the Nevada judge signed a monetary damages award against myself in violation of the agreement entered with WBGI to not litigate any monetary claims in Nevada, which judgment document was drafted by Mr. Story; and also 'awarded' the governance of WBGI to the Francik board, which is the board that is now seeking bankruptcy protection (though now minus Francik, apparently) after having spent down all of the WBGI assets I had amassed during the decade between 1994 to 2004.

27. WBGI's Francik board also sought to litigate a default judgment that had been obtained for my earned salary. This had been placed as an encumbrance on the Rain Forest parcel, precluding its sale unless satisfied. This was fraudulently re-opened when Francik and Tom Yeh falsely convinced the court that Linda Wagner and I were not WBGI officers in early 2004. This too is detailed somewhat in the attached Attachments "A-1" and "A-2". It is this re-

opened case that is currently pending in Hawaii, though stayed pending the appointment of a trustee, etc.

28. About April 2008, the monetary claims portion of the two actions filed by WBGI came to a "trial" in Hawaii. However, no actual trial took place. Rather, as detailed in the Attachments "A-1" and "A-2", the key witness Linda Wagner was fraudulently excluded from testifying. Her testimony would have shown that all of the hoax claims were in fact hoaxes, and were in fact valid WBGI expenditures, authorized by the WBGI Board of Directors, approved year by year by the JVP, in compliance with all applicable rules and regulations of both Nevada and Hawaii with respect to corporate officer actions, and were for the betterment of the gardens. Both the Hawaii 'judgment', as well as the Nevada 'judgment', are being sought to be set aside as having been obtained by criminal and civil frauds in the two litigations involving WBGI pending in Utah.

DESTRUCTION OF THE WBGI GARDENS CIRCA 2006-2013

29. Almost immediately following the Francik Board's tenure in September 2004, it began breaching the WBGI agreements with myself (credit card agreements, back-salary agreement that became due upon breach of the credit card agreement). Nevertheless I attempted to continue to work in furtherance of the botanical garden via the Foundation. Consequently, between 2004 and

2006 as I continued working on the garden, the garden was maintained (by myself and the limited gardening staff) and continued to grow in other areas (by my efforts exclusively) as I continued to plant trees, etc., according to the garden's long-term plan that had been in effect for the prior decade.

30. In 2006 I had exhausted the Foundation funds, and was forced to discontinue working on the garden at the end of that year. Linda Wagner and I subsequently relocated to Utah in May 2008, following her unlawful termination in early 2008 from teaching employment in Hawaii due to the criminal activity of Kenneth Francik lying about her to a Hilo grand jury (as detailed briefly in the attached).

31. As very little effort was placed by the Francik board on maintenance of the areas that had been developed by WBGI between 1995 to 2006, they all began to suffer the effects of neglect. Essentially, the Francik board focused the limited gardening staff to maintenance only of areas open to the general public (a small portion of the Visitor Center parcel, a small portion of the Rain Forest Parcel, and a small portion of the Waterfall Overlook parcel). I maintained the other areas between 2004 and 2006, and additionally expanded those areas with additional plantings in accordance with the long term plan, funded by the Foundation instead of by WBGI as during the preceding decade.

32. As weeds are rapid growers in the rainy areas of Hawaii such as the garden location, some weeds (primarily non-native grasses that are abundant in Hawaii) can grow as tall as ten feet in a single year, and up to 20 feet in 2 years (primarily sugar-cane, which persists as a weed when the land is no longer cultivated in sugar-cane. Consequently, one of the major concerns for the garden is maintenance by keeping the invasive weeds from entering and growing, as they quickly will grow taller than the desired plants, shading them out and killing them.

33. Once maintenance of the garden land was discontinued by the Francik Board in 2004, and by myself in 2006, the many areas of the garden in which WBGI had spent considerable resources began to rapidly deteriorate. I was able to save some of those areas nonetheless when Mr. Carlile¹⁵ acquired the 90-acre Waterfall Parcel (described below), and I was able to direct him to those

¹⁵ Cleo Carlile was one of the early investors in the gardens, and was dismayed/disgusted with the Kenneth Francik board. At one point he initiated criminal charges against Francik for theft of mature coconut trees, but dropped the criminal charges after Francik replanted the trees using WBGI funds. He purchased the Waterfall Parcel in 2007 from MKA when the Francik Board elected not to exercise the purchase option agreement, and he acquired it on the same terms as WBGI had arranged in 1994 (for about \$1,200,000). However, WBGI arranged the purchase when it was bare land. When Mr. Carlile acquired the parcel, it had had in excess of \$1,000,000 of WBGI funds spent on developing the parcel, including extensive development of roadway, waterfall overlook, and plantings. He then turned that parcel into a competing botanical garden with major zip-line attraction that now out-competes the paltry zip-line and Visitor Center parcel garden still owned by WBGI.

areas, where he then cleared the weeds before they killed the planted trees. He described to me that he had a crew work with him, and that the weeds were taller than the young trees, but that he'd gotten to them in time to save them.

34. However, most of the areas that the Francik Board abandoned (about half of the total land area that was developed) became overgrown with weeds, killing several hundred thousands of dollars of plantings on which WBGI had spent years in developing, but had not yet finished and opened to the public. The change in conditions at the gardens are reflected in the Attachments "B-1, B-2".

35. The major destruction to the garden, however, was not the abandonment of the plantings to 'nature' (or more properly, invasive weeds), but rather due to the sell-off of the WBGI lands, leaving WBGI currently 'owning' only the Visitor Center Parcel, upon which the Francik Board, including Francik, his girlfriend Leslie Cobos, Mark Robinson, and Steven Bryant have placed extensive monetary liens for roughly triple the purchase price of the parcel.

36. The sell-off of the WBGI lands commenced almost immediately after the Francik Board was erroneously positioned as the governance of WBGI, after the Reno court had excluded the proper Tolman board.

37. The first parcel sold off was the 3-acre Front Door¹⁶ parcel. This sale was done in violation of WBGI By-Laws and without realtor assistance or public marketing. It was sold to a close associate of Kenneth Francik for about ½ of its marketable value. The By-Laws required any divestiture of land (WBGI's primary asset) to have a clear shareholder majority approval (majority of interest, not persons). No such vote was taken, and the land was simply sold by way of a vote by the Kenneth Francik board, without any knowledge by the shareholders in advance. While this was good news for the purchaser, it was bad for the WBGI shareholders.

38. Subsequently, the Francik Board sold off the Rain Forest parcel. This was sold for less than the 1994 WBGI's and MKA's agreement purchase price, and for about ½ of its marketable value, to another close associate of Kenneth Francik. Again, this was done by 'private placement', without shareholder knowledge or approval or public marketing, and in violation of the WBGI bylaws. This sale was circa 2007, and netted only a small cash sum of about \$120,000. This parcel had a sale price of about \$1,200,000 even though it had had about \$1,000,000 of WBGI funds spent on its development (roadways, retaining walls,

¹⁶ WBGI's long-term plans for that parcel was to develop a service station and fast-food mart, which would have also been a place for tourists to learn about the adjoining botanical garden attraction

culverts, extensive plantings, rain-shelter, etc.)

39. Likewise, WBGI walked away from its purchase option on the Waterfall Overlook parcel in 2008, tendering that purchase option instead to Cleo Carlile, who paid nothing extra beyond the original terms as they were available to WBGI.

40. In addition to the exceptionally poor business decisions to sell off the lands that WBGI had spent years acquiring and a decade developing, for far below their marketable value and for less than paid for, it fraudulently spent funds that had been set aside for specific dedicated purposes. In 2004 WBGI raised approximately \$220,000 from existing partners in the JVP, who were promised that if they invested additional money beyond their original investment in the JVP, that their money would be set aside into a dedicated account separate from the general corporate account (that was used for payroll, etc.), and used only for the specific purpose of constructing a Visitor Center. I was present when the account was set up, and it was designated the *Visitor Center Account* at the Bank of Hawaii, with two signatories on the account¹⁷.

41. Over the course of several months, Kenneth Francik sent written promises to the shareholders promising that if they invested beyond their original

¹⁷ not myself, they were David Adams and Annette Emerson, WBGI's office managers.

investment, their money would be placed directly into the *Visitor Center Account* and used for no purpose other than construction of the much-anticipated Visitor Center. I was kept apprised of that account balance by the signatories on the account, and watched it rise to approximately \$220,000 as investors responded to Francik's exhortations, with approximately \$20,000 thereafter spent on legal work via Sherrill Ericksen, the attorney I'd retained for WBGI to perform preliminary *Special Use Permit* work required¹⁸ for that construction. Thereafter, the Francik Board, in conjunction with Mark Robinson, the purported CFO on the Francik Board, drained all of the money from that account without spending the money on Visitor Center construction as promised. Instead, they spent it on themselves and their associates.

42. Without having a decent Visitor Center to attract visitors, and minus the Waterfall Overlook as an attraction, visitor attendance began decreasing from its high in 2005, leading to a loss of funds to cover routine operating expenses.

43. Before Mr. Carlile was interested in purchasing the Waterfall Overlook parcel, he made numerous suggestions to the Francik Board as to how to make

¹⁸ The planning department, in order to approve the architectural plans that had been submitted which included a retail store and food bar in the Visitor Center, required the special use permit to sell products that were not produced at the botanical garden, which was zoned for agricultural usage

WBGI financially successful. Mr. Carlile was an experienced businessman, with whom I had many conversations regarding his background.¹⁹ Like myself, he had taught science in public schools for many years (in Texas; whereas I taught in California, Hawaii and Utah). Unlike myself, he thereafter had worked administratively as a high school principal for a decade. Later, he served on a college board in Florida, and developed numerous business interests, and served as the financial funds manager for several hundred clients of his. One of his suggestions to the WBGI Francik board was to develop a zip-line attraction plunging into the Umauma River gulch near the Waterfall Overlook.

44. After Mr. Carlile purchased the Overlook Parcel, WBGI retained a lease thereon to the Waterfall Overlook, making monthly payments to Mr. Carlile. After about two years (circa 2010), WBGI discontinued its lease, and WBGI tourists no longer travelled to the main attraction that had drawn tourists since 1996, and a very much inferior waterfall attraction was added, of which tourists would complain that they had been scammed (See Attachment "B-2"). Mr. Carlile then began developing the Waterfall Overlook parcel himself into a separate competing botanical garden and waterfall attraction (now known as

¹⁹ Regrettably, Mr. Carlile unexpectedly passed away in November 2012 and is not available to provide an affidavit to this Court. His Umauma Experience business venture is now being managed by his heirs.

Umauma Experience, www.umaumaexperience.com).

45. However, before Mr. Carlile's more thrilling and far more extensive zip line, that plunges into the deep Umauma River gulch, could be completed, WBGI took his zip-line idea and completed a 'kindergarten level' zipline²⁰ that sloped gently downhill into the small Honopueo creek bed. For about six months, the WBGI zipline was the only such attraction on the island while Cleo's was still under construction, and during that year WBGI purportedly posted a \$10,000 'profit' (if you exclude all of the obligations they had that they did not pay). Once Mr. Carlile's zipline attraction opened on the Waterfall Overlook parcel, it immediately became a major attraction, drawing customers away from the kindergarten level zipline of WBGI, which now has very little patronage²¹. Consequently, the sale (or non-acquisition) of the waterfall parcel was a major business blunder that not only lost the major attraction for WBGI, but also generated a strong competing business with a major zipline, major Waterfall Overlook, and \$1,000,000 worth of improvements to the parcel already in place for which Mr. Carlile did not have to spend on the development, because WBGI

²⁰ This is how it was described in one of numerous customer comments I've read slamming WBGI's zipline.

²¹ I have monitored its patronage since it opened, and have likewise been kept apprised of Mr. Carlile's zipline patronage.

had paid for those improvements during the preceding decade when it was developing the parcel.

EXPERT OPINION

46. WBGI, by and through Mr. Story, is purportedly seeking 'reorganization' to stave off its creditors. What it appears to actually be doing is attempting to sell the lone remaining parcel (26-acre Visitor Center parcel) to Mr. Robinson or Mr. Bryant (or both) to cover their claimed liens on the parcel, as a means of paying down its creditors (without actually making any paydown of the money owed to myself for spending 10 years developing the lands, which money owed is pending in the Hawaii court claim). Mr. Robinson has that parcel showing on the assets column at the original purchase price, before the \$1,000,000 worth of development that WBGI spent on it between 1996 to 2006 (primarily for landscaping, as well as for some infrastructure).

47. While the sale of the lone remaining parcel "at auction" or otherwise, at far below its actual value and without realtor input and public offering in the Hawaii market, would be a financial boon to the purchaser, it would be devastating to the WBGI shareholders, who would be left with a full 'shell' corporation of no asset, and simply short-term leases on land owned by others, with existing operations in the red. This would be a recipe for certain return to this court for

dissolution shortly thereafter, with the assets of the corporation effectively transferred to the members of the Francik board, leaving the shareholders robbed of their \$4,000,000 of investment.

48. Because of the numerous past frauds of the Francik board (theft of the Visitor Center account funds; sale of WBGI land assets in violation of by-laws, without public offering, without common business sense and to personal friends and cronies at greatly reduced prices; fraudulent prosecution of false criminal charges lodged against myself and my wife; fraudulent prosecution of false civil charges in numerous forums; etc.) this Court should take a good hard look at what Mr. Story proposes, which appears to be yet another fraud in which they seek this Court's approval.

49. Because of this extensive fraudulent activity, I believe it would be in the best interests of the WBGI shareholders (approximately 600 persons and entities such as family trusts) for this Court to appoint a Trustee to examine in detail the actual finances of WBGI, and not just Mr. Story's version. This examination should include:

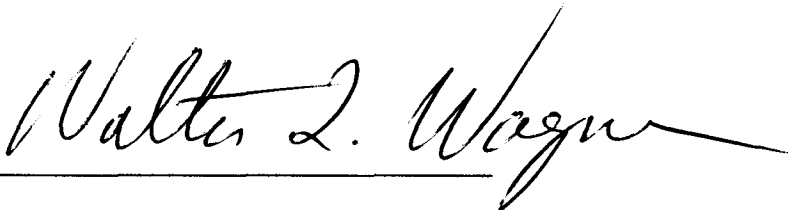
- Review of the possibility of obtaining a civil judgment against the WBGI board members for draining of the Visitor Center Account and using it for flights to and from Hawaii for themselves and others, and other improper purposes not related to actual construction of the Visitor Center;
- Review of the possibility of obtaining a civil judgment against Kenneth

Francik for lying to the courts in furtherance of his illegal scheme to obtain false convictions of myself and Linda Wagner, which he also used in conjunction with his fraudulent civil claims to preclude a civil trial;

- Review of the possibility of obtaining civil judgments against members of the Francik Board for initiating fraudulent litigation against the members of the Tolman board in violation of a written agreement between Mr. Tolman and Francik that WBGI funds would not be used for such litigations;
- Review of the possibility of obtaining civil judgments against the Francik Board members for spending approximately \$800,000 on litigation using fraudulent claims and without actual good-faith belief in the validity of the claims;
- Review of the possibility of recovering the Front Door parcel and Rain Forest parcel, which were sold with knowledge by the purchasers that the sales were in violation of WBGI by-laws and were fraudulent.

50. As a consequence of the extensive frauds and criminal activities of Francik and his board members, this Court might also consider dissolution as opposed to reorganization. I know persons who would be interested in purchasing the remaining assets, and who have the financial means to do so, if they were not also purchasing lawsuits.

DATED: May 23, 2013

A handwritten signature in black ink, reading "Walter L. Wagner". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Walter L. Wagner

ATTACHMENT "A-1"

Affidavit of Linda Wagner

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retlawdad@hotmail.com
808-443-6344

IN THE UNITED STATES BANKRUPTCY COURT

DISTRICT OF UTAH

--ooOoo--

WORLD BOTANICAL GARDENS,)	Bankruptcy No. 12-35494
INCORPORATED (WBG),)	A.P. No. 13-02099
)	
Plaintiff)	AFFIDAVIT OF LINDA M.
)	WAGNER IN SUPPORT OF
vs.)	RESPONSE TO WBG'S
)	"RESPONSE AND
WALTER L. WAGNER,)	MEMORANDUM IN
)	OPPOSITION TO MOTION
Defendant)	FOR STAY"
_____)	

AFFIDAVIT OF LINDA M. WAGNER IN SUPPORT OF RESPONSE TO
WBG'S "RESPONSE AND MEMORANDUM IN OPPOSITION TO MOTION FOR STAY"

I, Linda M. Wagner, affirm, state and declare under penalty of perjury of the laws of the State of Utah as follows:

1. I am over the age of eighteen and not a party to the above-entitled action. I was born and raised in Provo, Utah and graduated from BYU with a degree in

mathematics education, and have worked professionally in education since 1987 in both Hawaii and Utah.

2. I formerly served as an officer for WBGI since its inception in 1995 through and until September 2, 2004. On September 2, 2004 a vote was taken by the Board and a Change of Officer form was submitted on that date showing my position as having been replaced by one Annette Emerson. I had served continuously as a WBGI officer prior to that vote, including during the first half of 2004.

NEVADA CASE

3. I was advised by WBGI sometime in 2005 or 2006 that the Nevada trial in these matters was precluded from hearing claims then being promoted by the new managers of WBGI that Walter Wagner (my husband) had sold WBGI treasury shares and embezzled the money (which would have been a felony had it happened). Instead, the Nevada trial was only going to entertain the question of whether the Tolman Board, or the Francik Board, should manage WBGI. The claims pertaining to the sale of shares were to be heard in Hawaii. Since I was not a member of the Tolman Board (or the Francik Board) and did not have any testimony pertaining to that issue, I did not fly from Hawaii to Nevada to appear at that trial.

4. I was subsequently informed that I had been deceived, and that Kenneth Francik gave extensive testimony pertaining to the sale of shares owned by Walter Wagner, which he claimed was unlawful. The sale of those shares had no bearing on which of those two Boards was the proper Board to govern WBGI, or had been properly elected.

5. I managed the sale of the shares that my husband had owned, and I would have given testimony on that matter in Nevada had I known it was going to be discussed. Contrary to the false accusations made by Kenneth Francik, Walter Wagner sold only his own personal shares, not the WBGI treasury shares as Francik claimed and as the judgment document asserted. I know this because the application form used by the purchasers disclosed that fact, and I managed the accounting of those sales. Further, it would have been ludicrous for my husband to sell WBGI treasury shares when he owned more than 3,000 of his own shares, and he had received permission to sell his own shares.

6. The sale of my husband's shares was done through the World Botanical Gardens Foundation, for which I did the accounting. That money was fully accounted for. Approximately 25% went to immediate overhead (20% commission, 5% office expenses such as printing and mailing). The remaining amount was spent on the betterment of the WBGI garden. This included a nominal salary to my husband (allowing him to continue working at the WBGI garden, which he did full-time between 2004 and 2006 in like manner as in the previous decade between 1995 to 2004). It also included extensive expenditures for equipment, plants, garden materials such as weed-spray, etc., again in like manner as I had been accounting during the previous decade as my husband built the botanical garden. By the end of 2006 or early 2007, all of the monies from the sale of my husband's shares had been spent on the WBGI garden for its betterment.

7. I fully believe that had I not been deceived by WBGI's agents and attorneys, and had appeared and testified, that a monetary judgment would not have been

entered against Walter Wagner for the sale of shares which were purportedly corporate treasury shares, not his own shares as was actually the case.

HAWAII CASE

8. I was also prevented from testifying in the Hawaii case by fraudulent means. This occurred due to the orchestration of my false arrest at the Hawaii trial, which was orchestrated by the trial judge and Ken Francik, who was serving as WBGI's president after replacing my husband in that capacity in September 2004.

9. Sometime around January 2004, Ken Francik appeared before a grand jury in Hilo and lied about me, claiming I had been replaced as a WBGI officer in 2003, not in 2004 as the Nevada documents show and as was the case. Using that false claim, he convinced a grand jury to issue a criminal charge against me for 'identity theft' for stealing the identity of being a corporate officer (in which capacity I had served continuously since 1995, and since 2001 for the Nevada corporation, until September 2004). I was also wrongly charged with 'attempted theft' based on that same lie.

10. About two months later, I appeared at a pre-trial hearing before judge Nakamura. At no time did he ever disclose or mention to me that he was holding an arrest warrant for me (I later learned it had been signed by him the day after the grand jury met), or arrest me, or take any other action other than to remind me of the forthcoming trial date about two weeks later.

11. About two weeks after that pre-trial hearing, I appeared at the trial being conducted in Hawaii. I was a key witness for my husband, as I had served as the Secretary and Treasurer of WBGI during the period of time under review at the trial, and I had extensive testimony planned pertaining not only to the fraudulent

accusation that my husband had embezzled and sold corporate treasury shares (not his own, as was actually the case), but to all of the other false accusations of alleged wrong-doing as well. My husband had spent large sums of investor money on developing the WBGI garden during the decade from 1995 to 2004, and I had managed the books and was familiar with the expenses, and was well aware that they were all legitimate expenses and were for the betterment of the WBGI garden.

12. However, about ½ hour after I appeared in judge Nakamura's courtroom at about 8:00 AM, I was arrested and removed from the courtroom, ostensibly based on the warrant that judge Nakamura had been holding for the preceding two months. I heard a noise to the rear, and saw several sheriff's deputies enter through the main doors of the courtroom. At the same time, judge Nakamura stood up, announced he was taking a short break, and left the courtroom through his chamber door. Within seconds, the sheriff's deputies were escorting me to the jailhouse. My husband had no opportunity to make any oral motion as the judge had left the courtroom. Instead, he began making arrangements for bail, and I was released from false arrest in mid-afternoon. I drove home, while my husband then drove back to the courthouse.

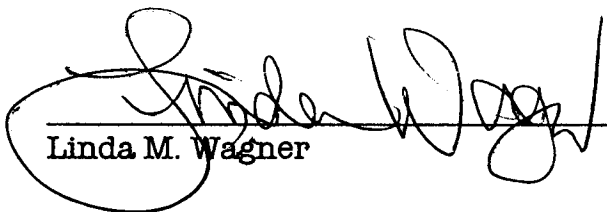
13. Subsequently, the criminal charges were dismissed in their entirety, after extensive evidence was provided that I was in fact a WBGI officer in 2004 and not replaced in 2003 as Ken Francik falsely claimed to the grand jury.

14. I fully believe that the testimony I would have provided, had I not been unlawfully arrested based on Ken Francik's lies, would have clearly shown that all of the expenditures made by my husband while serving as WBGI's president were valid expenditures for lawful purposes in furtherance of the development of the

WBGJ garden, and likewise that his sale of his personal shares via the World Botanical Garden Foundation were his own shares, not corporate treasury shares, and that the Foundation used the money for the betterment of the WBGJ botanical garden in like manner as in the prior decade when he had spent corporate monies rather than Foundation monies.

15. I had thought WBGJ's agents had grown tired of working those frauds when they allowed the same false judgments, which also named me, to be discharged through a bankruptcy petition I filed over two years ago. I'm surprised that they are now attempting to move this clear fraud into the Utah court system by attempting to prevent the just discharge of these fraudulently obtained judgments.

DATED: May 1, 2013



Linda M. Wagner

ATTACHMENT "A-2"

Affidavit of Walter L. Wagner

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532 N 700 E
Payson, UT 84651
retlawdad@hotmail.com
808-443-6344

IN THE UNITED STATES BANKRUPTCY COURT

DISTRICT OF UTAH

--ooOoo--

WORLD BOTANICAL GARDENS,)	Bankruptcy No. 12-35494
INCORPORATED (WBG),)	A.P. No. 13-02099
)	
Plaintiff)	AFFIDAVIT OF WALTER L.
)	WAGNER IN SUPPORT OF
vs.)	RESPONSE TO WBG'S
)	"RESPONSE AND
WALTER L. WAGNER,)	MEMORANDUM IN
)	OPPOSITION TO MOTION
Defendant)	FOR STAY"; ATTACHMENT "A"
)	

AFFIDAVIT OF WALTER L. WAGNER IN SUPPORT OF RESPONSE TO
WBG'S "RESPONSE AND MEMORANDUM IN OPPOSITION TO MOTION FOR STAY"

I, Walter L. Wagner, affirm, state and declare under penalty of perjury of the laws of the State of Utah as follows:

1. Attached herewith, as a thick document entitled *Attachment "A"* are true copies of the sworn affidavits that have been filed in that parallel action, *Wagner v.*

Michie, WBGI et al., US District Court, Utah #2:11-cv-784-RJS-PMW, and which were incorporated by reference by the preceding *Answer* filed herein.

2. Both Magistrate Paul Warner, and District Judge Robert Shelby, declined to consider the facts referenced in the accompanying affidavits and instead based their decisions wholly upon the tainted 'judgments' obtained by the criminal fraud detailed by those non-considered facts.¹ While Judge Shelby did acknowledge the arrest and removal of my chief witness at trial (Linda Wagner, WBGI's Secretary and Treasurer during the periods of time in question) he makes the nonsensical 'argument' that removal of a party's primary witness at trial does not deprive that party of "a full and fair opportunity to litigate" so long as the party himself is allowed to remain and continue with a 'trial'². While certainly I could have remained at the mock "trial" that was being conducted, minus my chief witness, it would have a) been pointless because of the lack of testimony of my chief witness which was critical key testimony in the defense of that action; and b) been a very unmanly thing to do to allow my wife to be illegally incarcerated by a corrupted, racist judge without taking any action to lessen that and instead continue at the

¹ See WBGI's "Exhibit D" to their Response, page 5, top paragraph wherein judge Robert Shelby states: ***"This court will not overturn a state court decision on the grounds that Mr. Wagner suggests, no matter how many affidavits he submits."***

² See WBGI's "Exhibit D" to their Response, Page 4, top paragraph wherein judge Shelby states: ***"Mr. Wagner asserts that he could not present his own testimony during that trial because he had to bail his wife out. The court finds that Mr. Wagner's argument is nonsensical. There is no evidence that Mr. Wagner himself was arrested or was prevented from appearing at the Second Hawaii trial."***

mock "trial" minus my key witness, even if such is the way some others might treat their wives.

3. I am of the opinion that the appellate court will disagree with judge Shelby's decision to ignore the clear evidence of criminal frauds that were used by WBGI's agents to obtain both the Nevada 'judgment' as well as the Hawaii 'judgment', and accordingly I am filing an Appeal of his decision, and will keep this Court apprised of the progress of that Appeal.

4. I summarize the gist of the accompanying *Exhibit "A"* affidavits, which are the true facts therein, as follows:

NEVADA CASE

a) I was deceived into believing that the Nevada case would try only the issue of which of two competing Boards of Directors of WBGI was properly elected; namely the Tolman Board (of which I was a member) or the Francik Board. I was specifically told by WBGI's Francik attorney that no monetary claims of any form would be presented in the Nevada case, as a means of keeping both the Nevada Case and the Hawaii case as active cases covering two separate areas of issues.

b) I was surprised at the Nevada 'trial' when WBGI's attorney began injecting monetary claims pertaining to the sale of my personal shares of WBGI ownership. The false claim that I had embezzled some of the WBGI treasury shares, and sold them and kept the money, was one of the false monetary claims that was alleged in the Hawaii case (and had been originally also alleged in the Nevada case until it was truncated by the Hawaii judge to just the governance issue). My actions thereon were entirely irrelevant to Ron Tolman's actions (Mr. Tolman was a very concerned WBGI shareholder) in organizing a board of ten WBGI shareholders to

salvage WBGI from the illegal actions of Kenneth Francik and his 'Francik Board'. The Tolman Board had had its organization ratified by WBGI's long-time attorney, John Price of Honolulu.

c) In fact, I never sold the WBGI treasury shares (after 2003; prior thereto as WBGI's president I sold treasury shares via an agent to raise capital for WBGI), and only my own personal shares of ownership, which were donated to the World Botanical Gardens Foundation, and which were also sold via an agent (Mr. Dan Perkins) to persons who were fully apprised that they were purchasing shares I had donated, and that the proceeds would be used for the betterment of the WBGI garden. In fact, the proceeds were used for the betterment of the WBGI garden as detailed in the *Exhibit "A"* as well as in the affidavit of Linda M. Wagner accompanying my affidavit.

d) Had I not been deceived by Francik's attorney into believing that monetary claims would not be presented, I would have had two witnesses present who would have testified that I sold only my own personal shares donated to World Botanical Gardens Foundation, not the Francik's WBGI treasury shares. Those witnesses would have been Linda Wagner, as per her accompanying affidavit, and Mr. David Adams, who had served as the WBGI office manager until February 2005, when he quit in disgust with Francik's lying, and moved to Texas where he now manages a WalMart store. Mr. Adam's testimony would have been that he had several discussions with Ken Francik to the effect that Francik was glad I was selling some of my own shares, because it was reducing my share count which he desired to see. He would also have detailed how he (Mr. Adams, in his capacity of WBGI office

manager) reduced my share-count in the corporate data base as those share-sales were ongoing, and that he kept Francik apprised of such until he quit.

e) At that Nevada trial, Francik lied and falsely claimed I sold his treasury shares, and falsely claimed that the money was not spent on the betterment of the WBGI garden, also falsely claiming only he or his Board could have spent the money wisely on the garden betterment. He also falsely claimed he was retired from the LAPD, when in fact he was fired from the LAPD for lying under oath, and prosecuted for that felony.

HAWAII CASE

5. In addition to the fraud worked in Nevada to preclude Linda Wagner from testifying at that 'trial', an even more damaging fraud was worked in Hawaii by Ken Francik and his agents.

6. Ken Francik had made the false claim and lie that Linda Wagner was not a WBGI officer on January 1, 2004 when she signed the last in a series of Promissory Notes that were at issue in my civil case against WBGI for unpaid wages (*Wagner v. WBGI*, filed in 2004, aka *First Hawaii Case*). This had proved successful in January 2008, resulting in the trial court dismissal of that case on the false claim that I was working a fraud on the court by submitting a document allegedly falsely signed by Linda Wagner as a WBGI officer when no longer such an officer. (That case was subsequently re-instated, though solely on the *quatum meruit* aspect of the back pay, as apparently the appellate court also believed that lie by Francik. It is currently pending before judge Hara in Hilo.). Because we'd started WBGI in 1995, we had nine such Promissory Notes signed year by year until January 1, 2004 when the last one was signed.

7. Apparently because that lie had worked well for him in that civil case, he sought to derail our defense of the fraudulent case he'd initiated against me and Linda Wagner (*WBGI v. Wagner*, filed 2005, aka *Second Hawaii Case*). A few weeks after the dismissal of *Wagner v. WBGI* (*First Hawaii Case*), circa late January 2008, Ken Francik appeared before a Hilo grand jury and repeated his lie that Linda Wagner had signed that last, January 1, 2004 Promissory Note while no longer a WBGI officer. He falsely claimed instead that she had been replaced as that officer by one Annette Emerson in a supposed election conducted in August 2003. By giving specific false details, he made it appear that his lie was true, and he was believed by that grand jury, which accordingly issued an indictment naming Linda Wagner (and myself) as someone who had engaged in felony 'identity theft' for allegedly stealing the identity of a WBGI corporate officer, and in 'attempted theft' for attempting to obtain money from WBGI using an allegedly falsely-signed Promissory Note.

8. In fact, Linda Wagner was that WBGI officer until September 2, 2004. While Annette Emerson (along with myself, Francik and others) were elected to a partnership board (that had overview over the WBGI corporation) in August 2003, that partnership board decided to maintain the existing corporate officers (myself and Linda Wagner) to manage the day-to-day affairs of WBGI, and no change-of-officer form was required.

9. The Nevada corporate records for WBGI show the renewal of the WBGI corporate officers on February 23, 2004 with me as President, Linda Wagner as Secretary, and Dan Perkins substituted in for Linda Wagner as Treasurer; with Daniel Perkins as the Resident Agent (for service of process). The next filing

thereafter shows on March 19, 2004 wherein Annette Emerson sought to replace Daniel Perkins as the Resident Agent (for service of process). The next filing thereafter is a change of officer form filed June 28, 2004 wherein Annette Emerson designated herself as the Treasurer and me as the President, leaving blank the position of Secretary which was being filled by Linda Wagner. Thereafter, dated on September 2 and filed on September 14, 2004 is an "Amended" change of officer form purporting to backdate to April 2004 and replacing all of the officers with Emerson and Francik. It also purports to have a Nevada residence for Emerson, when in fact she is and was a resident of California.

10. Notwithstanding the corporate records showing Linda Wagner, not Annette Emerson, as a WBGI officer until September 2, 2004, and notwithstanding her continuing to function in that capacity including signing of Corporate Resolutions for land acquisitions, etc., Francik was able to convince that grand jury that Linda Wagner had been replaced by Annette Emerson in August 2003, and fraudulently get them to issue a false indictment falsely naming Linda Wagner as a felon.

11. With that false indictment in hand, Francik then conspired with judge Nakamura to have Linda Wagner arrested at the forthcoming civil trial (*Second Hawaii Case*) scheduled for two months later.

12. Two weeks prior to the forthcoming civil trial, at a pre-trial hearing, both Linda Wagner and I personally appeared before judge Nakamura. Unbeknownst to us at that time, he was holding a warrant for Linda's arrest, which he neither disclosed to us nor exercised at that time, and simply reminded us of the forthcoming trial date two weeks later.

13. Thereafter, at the "trial", judge Nakamura exercised on the warrant approximately ½ hour after Linda Wagner appeared in his courtroom, having her removed from his courtroom to the jailhouse while he took a 'break', while leaving me no opportunity to request a stay or continuance, or O.R. release for Linda, etc..

14. Since Linda Wagner was my chief witness, there was little point in remaining for the remainder of the sham "trial" and I instead went and secured her bail, releasing her from false arrest around 3 PM, whereupon I immediately returned to the courtroom, but found that the "trial" had been conducted without any of our testimony, and had adjourned. A motion for a retrial was rejected by judge Nakamura, and the appeal was dismissed after two years, following the self-recusal of the original appellate panel which had obtained copies of the transcript of judge Nakamura's arrest of Linda Wagner, and the new panel within a few days after such recusal simply dismissed the appeal on the claim they couldn't understand what was being complained about.

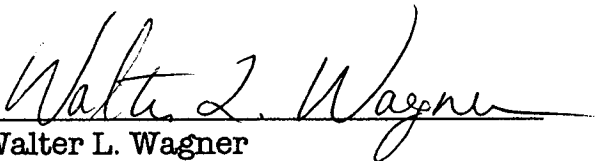
15. Subsequently, two years later, following extensive presentation of evidence including the corporate records of Nevada showing Linda Wagner as a corporate officer during the requisite time period, the 'indictment' was dismissed in its entirety. Within one year after that dismissal became final, the parallel federal action of *Wagner v. Michie, WBGI, et al.* was filed for the tort actions of repeated lying by Francik to the grand jury and a host of others thereafter, etc.

CONCLUSION

16. Had Linda and I been able to give our testimony at the civil trial (*Second Hawaii Case*) we would have detailed how Francik's testimony was lying on his part, and on the part of Emerson as well who gave her false interpretation of the records

we'd maintained. Our testimonies would have shown that not only were the sale of my personal shares not the sale of corporate treasury shares as Francik was falsely claiming, but that all of the expenditures I had made as WBGI's president were valid expenditures, approved by the shareholders at the annual meetings, and for the betterment of WBGI, and well within the purview of corporate actions for corporate officers. Since Linda Wagner was keeping those books, she too was well aware of those expenditures, what they were and how they benefitted WBGI, or were otherwise required by law. However, because of the criminal fraud of Francik, such testimony was not presented, resulting in the fraudulent judgment document based entirely on the false testimony of Francik and his cronies.

DATED: April 30, 2013


Walter L. Wagner

ATTACHMENT "B-1"

Visitor Comments *circa* 2004-2006

EXHIBIT "A"
Visitor Comments circa 2004-2006

The following comments were copied verbatim from the WBGi website from circa 2004-2006 (the comments were placed there by the Kenneth Francik board), and are also typical of the types of comments WBGi received circa 1998 to 2004. (From 1995 to 1997 there were numerous negative comments from visitors relating primarily to the immaturity of the garden, which was founded in 1995 by plaintiff herein and his Board of Directors). These comments are reflective of the state of the gardens during the transition from the founder Board of Directors to the subsequent Boards (transition at September 2004 to the Kenneth Francik Board)

"Beautiful! Rare Collection!"

Bobby P., New York, NY

"Beautiful. A lot of love has gone into caring for this place."

Linda B., Park City, UT

"Very beautiful gardens and one of the most picturesque waterfalls I've ever seen."

Bernard M., Black Diamond, WA

"The falls are marvelous and the flowers in the Rain Forest are breathtaking!"

Brenda C., Statesville, NC

"Your falls are exquisite! I love your gardens and the variety you have. I will certainly visit again on our next trip to enjoy your progress. Your master plan is wonderful & inspirational. Good Luck!"

Don T., Roseville, MI

"I would recommend this activity to all. The garden and waterfalls was beautiful. The service representatives were extremely friendly and personable."

Renee H., Houston, TX

"Very nice grounds! The variety of plants & the layout of them is wonderful!!! Can't wait to come back to see how everything matures & especially the "Maze." The fall were better than I can describe!"

Jamie K., RSVL, MI

"It is a wonderful sightseeing tour with a high value."

Klaus A., Deckenpfronn, GER

"Very pretty, well worth the time and price. We just hope our pictures will do it justice."

Anon

"The service was great. The view of the waterfalls was breathtaking. The orchid wall was fantastic. The photos were unbelievable."

Michael P., Granada Hills, CA

"Very beautiful, unbelievable plants and views, well worth the time and money. Delicious fruit!"

Lisa S. Riverside, IA

"Very interesting. Can be the best garden in Hawaiian Islands. We'll be back in 3 years or so to see more progress."

Jack S., Huntington Beach, CA

ATTACHMENT "B-2"

Visitor Comments *circa* 2013

EXHIBIT "B"

Visitor Comments circa 2010-2013

The following Visitor Comments are copied from the internet article entitled "*Reviews of World Botanical Gardens in Trip Advisor*" and were copied in March, 2013. I believe them to be fairly accurate representations of the current state of the gardens in 2013. This current state of fraud, waste and mismanagement is serving as the basis for appointment of a receiver in federal court. The Umauma Falls was discontinued as part of the WBGI tour circa 2009 when the Francik board discontinued the lease arrangement after having allowed the land title to transfer to Cleo Carlile, who developed that 90-acre parcel, and the adjoining 90-acre parcel he'd purchased through me earlier, into Umauma Experience (www.umaumaexperience.com). A couple of the comments are from 2008 when Umauma Falls was part of the tour, and after only two years of neglect instead of the current seven years of neglect.

[http://www.tripadvisor.com/Attraction_Review-g60581-d486997-Reviews-World Botanical Gardens-Hakalau Island of Hawaii Hawaii.html](http://www.tripadvisor.com/Attraction_Review-g60581-d486997-Reviews-World_Botanical_Gardens-Hakalau_Island_of_Hawaii_Hawaii.html)

"not up to the standards of hawaii tropical botanical garden"

Reviewed January 30, 2013

considering what was on offer for \$13 entry, it was an average experience... on Dec 24th morning, we drove through one mile of sharp gravel to see a small water falls-- we were scared our rented car might have a punctured tyre. there was also the sad sight of emaciated cattle on the adjoining farm---clearly the farmer is in dire state---the animals looked famished and added to the spoiling of our mood. then we had a muddy hike to see another small water falls and there was a square with trees. after visiting the lovely botanical gardens --ho'omaluhia, foster, lyon arboretum and Waimea valley --in Oahu, this was no great shakes. also the tropical botanical gardens inside the scenic 4 mile drive is miles better than this one for the same entry fee. on the positive side, the staff are very pleasant and the segway looked like fun for youngsters, we did not try it as it was raining heavily on the morning we went !

Visited December 2012

Very disappointing"

Reviewed January 20, 2013 via mobile

We visited the gardens this past week and were very disappointed. The place is poorly laid out and, at least when we went through, relatively little was in bloom or past it's prime (certainly in terms of orchids). **Oh, and if you have any problems with walking through spider webs, good luck. They are everywhere along a good part of the "gardens."**

"MISLEADING! NOT UMAUMA FALLS!"

Reviewed November 15, 2012

this place is a rip off, **they'll charge you \$13 for falls you haven't even heard off and "forget" to mention that you won't see umauma falls..** if you want to see those, stay away. If you go there nonetheless, make them be specific of what exactley they offer..

Was this review helpful? ☒ Yes

"Depends on your expectations"

Reviewed October 19, 2012

I wanted to see this botanical garden and its ok depending on your expectations...there are some pretty plants and flowers to see, some palm trees, and a crazy walk to the "river"to see a waterfall, which isnt worth the long walk in which there really are not clear directions how to get there...i did it but the waterfall was like a notch above a cascading mountain stream type fall not worth the bug bites...the waterfall you to drive to is ok but not really impressive. I saw it all in under 2 hours, i much prefer hawaii tropical botanical gardens along the scenic loop in onomea bay. If you can pick and have 3 to 4 hours choose hawaii botanical gardens. If you have never been to Hawaii and are short on time then this is ok...you are at a botanical garden just dont expect much else.

Visited October 2012

"A complete con"

Reviewed September 19, 2012 via mobile

2

people found this review helpful

The ads looked impressive, but the reality did not live up to them at all. It was a case of: drive up a bumpy road about a mile to see a so-so waterfall, then drive some more to see the "rainforest walk", a mile of unpaved track up a hill lined with a few nice specimen plants, a few labels on dead/dying plants, and a whole lot that you will have seen growing by the roadside already. Below the road is the "6 acres" of tired looking garden which looks like its heyday was in the 1930s, again with some nice specimens, but **altogether looking like the whole thing has seen better days**, including a "maze" that you can see through. If you're there for the segway tour it might be different (about \$1 per minute mind you), but the zip lines we saw looked about the same level that you'd find in a kids' playground. All in all, not impressed. **If you do go, smother yourself in insect repellent, but our advice would be: don't waste your money.**

"very booring"

Reviewed June 21, 2012

2

people found this review helpful

not ran very well very sloppy not much to see i would not recommend this attraction to anyone

Visited June 2012

"Rip-off"

Reviewed May 30, 2012

3

people found this review helpful

Several years ago, we enjoyed visiting this garden which had a beautiful rainforest garden. So, we returned to the garden on our second trip to Hawaii, May 12. This time, the only gardens were behind the office. This area behind the office was nice, but nothing special. After seeing that part of the garden, we drove to the waterfall which is partly obscured by plants growing on the bank at the overlook. The waterfall is ordinary, not worth paying to see. Then, we drove to the "rainforest" which is nothing but a hot one-mile uphill walk. There is nothing to see on this walk. The rainforest that we visited several years was apparently abandoned. Do not spend your money for this garden. Go to the Akaka waterfall and the Hawaii Tropical Botanical Garden instead. The gardens do not have a regular bathroom - only portables.

Visited May 2012

"Waste of time."

Reviewed June 23, 2012

3

people found this review helpful

\$13 bucks to wander around someones delapidated garden. Save your money and time. We kept looking for something pretty. Most of the plants were in bad shape looking very forgotten like Home Depots discard rack for plants. If you're still curious, just drive in and walk around I think it's run by teenagers and they don't seem to care. Employee cars were parked in part of the garden. Tacky. They were friendly enough though.

Just go for a walk to Akaka Falls or simply find a hiking trail and your experience will be many times better and you'll see all the same things but they will be healthy looking and in a natural setting.

Visited June 2012

"Total rip off"

Reviewed June 28, 2012 via mobile

2

people found this review helpful

Total rip off! Trust me not worth it there guides suck! Talking about parties n drinking the night before! Poor management poor gardens

"Wish I had gone to Hawaiian instead."

Reviewed April 23, 2012

2

people found this review helpful

This place has some pretty stuff. You get to walk by the river and see a waterfall or two. I think another garden would have been more interesting though. No toilets except porta ones. **Lots of spider webs to walk through (ick!).** Make sure you bring lots of mosquito spray if you walk by the river.

Visited April 2012

"Just another place to see plants"

Reviewed February 29, 2012

1

person found this review helpful

other botanical gardens have better viewing and plant presentations. Not a very good value

"A rip-off"

Reviewed February 16, 2012

3

people found this review helpful

We also went there expecting to see Umauma Falls. Once we paid \$13 a piece we learned they had leased the Falls property to a Zip-line up the road and we weren't allowed to go there. The hedge maze was kind of nice.

"Port o pots but no Umauma Falls."

Reviewed February 6, 2012

3

people found this review helpful

Skip this one, although their website makes you think it is worth the \$13/person, it isn't. **After we bought our ticket, we discovered the Umauma Falls is no longer included; that'll cost you an additional \$12/person. It appeared like this place was either going out of business or just starting over; worth \$5/person at the most in its current condition.** No bathrooms, just 3 port o pots full of flying/biting insects. The fact that there were no other cars or tour buses in the lot should have been our first clue. Tip: **Grab a stick and hold it in front of your head to help keep the spider webs away** if you attempt the river walk, and wear bug repellent.

Visited January 2012

"Just be aware that Umauma Falls is not included in the basic entrance fee anymore"

Reviewed August 13, 2011

2

people found this review helpful

Previously this was a favorite place to recommend, due to the World Botanical Garden and the beautiful Umauma Falls. We were very disappointed when we last visited, because **we learned that Umauma Falls is no longer included in the basic entrance fee to the Botanical Gardens**. Make sure that if you are planning to specifically view Umauma Falls, you know beforehand that you will need to pay an additional fee.

Visited June 2011

"Not worth the price"

Reviewed August 12, 2011

5

people found this review helpful

This "garden" - while mildly interesting - was not much of a attraction. The "walk" up a small valley **was badly maintained** and of no botanic value, other than a few species labeled among the jungle. The Main garden was well labeled, but not exceptional, unusual or high quality. The price per person was out of proportion to the value of the experience.

Visited August 201

"This place is a scam."

Reviewed March 24, 2011

9

people found this review helpful

The name "World Botanical Gardens & Waterfalls" is very close to the "Hawaii Tropical Botanical Garden," (htbc.com). We drove all the way to the World Botanical, thinking that this was the great botanical attraction in the Hilo area. We paid \$13/person, and found the garden to be sparsely landscaped. The maze was neat, but everything else was underwhelming. I believe that this place named itself close to the Hawaii Tropical Botanical Garden, to suck in confused people like us. BTW--The Hawaii Tropical is amazing and a must see, and it is closer to Hilo.

Visited March 2011

My husband and I went last week and were very disappointed..."

Reviewed August 18, 2010 via mobile

4

people found this review helpful

My husband and I went last week and were very disappointed. Umauma falls is no longer part of the gardens, it's under a new zip line company called the umauma experience. The falls that are part of the actual gardens are nice but don't compare to Akaka. We took the rainforest hike and it felt like **many plants were dying** and they weren't well marked. Zip isle is part of the park but we opted not to pay \$150 each and

after seeing the zip lines we were so glad we didn't. We were tired and **bug bitten** so we didn't walk around the gardens for long. They were ok, but we wished we'd saved our \$13 plus \$6 for umauma falls (also not worth the hassle and money) and gone elsewhere

"Save your time & money"

Reviewed January 22, 2010

2

people found this review helpful

Really not worth it. Not well-organized, and relatively few WOW sights. Go to the nearby Tropical Gardens. Much, much, much better!

"A Rip-Off indeed"

Reviewed August 28, 2008

4

people found this review helpful

The only thing worth seeing at this place is the Umauma Falls and even after seeing it, we had a hard time figuring out if it truly was worth the time, money, and effort.

"Rip-off!"

Reviewed March 13, 2008

5

people found this review helpful

We went here per the recommendation of a Fodor's pocket guide. It is a huge rip-off. They charge \$13 per person to see this place and yes it is a work in progress.

"Terrible"

Reviewed January 22, 2010

1

person found this review helpful

Si votre volonté principale est de **vous battre avec les toiles d'araignées de ces jardins non-entretenus** et de chercher un sens réel à cet endroit ; c'est parfait pour vous !

(Translation: If your main desire is to **fight with the cobwebs** of these **non-maintained gardens**, and to seek the true meaning of this place, this is perfect for you!)